

D. B.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
EAGLE MARINE SERVICES, LIMITED	)	DATE ISSUED: 09/29/2008
	)	
Self-Insured	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	
	)	
ILWU-PMA WELFARE PLAN	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of William Dorsey, Administrative Law Judge, United States Department of Labor.

Joshua T. Gillelan II (Longshore Claimants' National Law Center), Washington, D.C., and Matthew S. Sweeting, Tacoma, Washington, for claimant.

Russell A. Metz (Metz & Associates, P.S.), Seattle, Washington, for self-insured employer.

Kathleen H. Kim (Gregory F. Jacob, Solicitor of Labor; Rae Ellen Frank James, Acting Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order (2007-LHC-00099) of Administrative Law Judge William Dorsey denying benefits on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant injured his back lifting a turnbuckle on February 14, 2005, during the course of his employment for employer. CX 1 at 1. Claimant was unable to work from February 16 through April 3, 2005. The ILWU-PMA Welfare Plan (the Plan) paid claimant \$5,376.43 in disability compensation for his injury. CX 4. The Plan also paid medical benefits totaling \$4,918.53. EX 2 at 1. Claimant filed a claim for compensation under the Act on March 9, 2005. CX 1 at 2. The Plan advised claimant's attorney on November 17, 2005, that it had a lien against benefits due under the Act for its payments to claimant and to his medical providers. *Id.* The Plan, however, never formally filed an application for a statutory lien under Section 17 of the Act, 33 U.S.C. §917, and its implementing regulation, 20 C.F.R. §702.162.

In a January 8, 2007 letter, employer accepted liability under the Act for claimant's work-related injury. CX 5. The Plan accepted employer's offer of \$8,100 in satisfaction of its prior payments of disability and medical benefits, and employer paid the Plan accordingly.<sup>1</sup> Employer also paid claimant an additional \$1,654.50 in compensation based on its using a higher average weekly wage than that computed by the Plan and by paying claimant for periods when he did not receive any compensation from the Plan. CX 3 at 1; EX 2 at 2-3, 6. Claimant objected to employer's payment to the Plan because the Plan did not follow the procedures set forth in Sections 17 and 702.162 for establishing a statutory lien, contending that, in the absence of such a lien, employer remains fully liable to him for compensation benefits due under the Act. Thus, claimant sought to hold employer liable to him for the amount employer paid to the Plan, \$5,376.43.

In his decision, the administrative law judge rejected claimant's contention. The administrative law judge found that the informal handling of the Plan's lien did not

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<sup>1</sup> The Plan stated that employer's payment represented full satisfaction of the lien for \$5,376.43 in disability benefits it paid claimant, and of medical benefits totaling \$2,723.57, or \$2,194.96 less than the Plan represented that it actually paid to medical providers. CX 5 at 3.

prejudice claimant because he is not entitled to a double recovery. Decision and Order at 3. The administrative law judge found that claimant implicitly recognized the Plan as a qualifying trust under Section 17, and that the Plan's statutory lien rights vested when it paid claimant disability benefits. The administrative law judge found that the Plan's decision to present its claim directly to claimant and employer without routing it through the Department of Labor makes no difference when claimant has no quarrel with the amount employer paid the Plan. Thus, the administrative law judge dismissed claimant's claim that employer remains liable to claimant for compensation benefits under the Act and that employer should be denied a credit against its compensation liability for the payment it made to the Plan.

On appeal, claimant challenges the administrative law judge's rejection of his contention that employer remains fully liable to him for disability compensation due under the Act.<sup>2</sup> The Director, Office of Workers' Compensation Programs (the Director), responds that the administrative law judge erred by finding on the facts of this case that the Plan has a lien that entitles employer to a credit for its payment to the Plan against its compensation liability under the Act. Employer responds that the administrative law judge's decision should be affirmed so as to prevent claimant from receiving a double recovery. Claimant has filed a reply brief.

Claimant and the Director contend that employer is not entitled to a credit against its compensation liability to claimant for its payment to the Plan because the Plan did not comply with the statutory and regulatory procedures for obtaining a lien under Section 17. Thus, they contend that employer is liable to claimant for the full amount due claimant for his disabling work injury.

We agree that the administrative law judge's decision is not in accordance with law. Section 17 of the Act states:

Where a trust fund which complies with section 186(c) of Title 29 established pursuant to a collective-bargaining agreement in effect between an employer and an employee covered under this chapter has paid disability benefits to an employee which the employee is legally obligated to repay by reason of his entitlement to compensation under this chapter or under a settlement, the Secretary shall authorize a lien on such compensation in favor of the trust fund for the amount of such payments.

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<sup>2</sup> Claimant does not challenge employer's payment to the Plan for medical benefits it paid providers for claimant's work injury. Claimant's Brief in Support of Petition for Review at 8 n.3.

33 U.S.C. §917. The implementing regulation states that “An application for such a lien shall be filed on behalf of the trust fund with the district director,” 20 C.F.R. §702.162(b)(1), and further provides that the district director is to take specified action on the lien claim. 20 C.F.R. §702.162(c)-(j). If neither the compensation claim nor the lien claim is contested, the district director is to enter an order awarding benefits and notifying the parties “of the amount of the lien and manner in which it is to be paid.” 20 C.F.R. §702.162(d). If the compensation claim and/or the lien claim is contested, the case is to be transferred to the Office of Administrative Law Judges; the administrative law judge is to rule on the application for a lien. 20 C.F.R. §702.162(e)-(g).

In this case, neither the district director nor the administrative law judge authorized a lien because the Plan never filed an application for a lien, pursuant to the criteria set forth in Section 702.162. The administrative law judge found that as a qualifying trust under Section 17, the Plan’s lien rights vested when it paid claimant disability benefits. This finding cannot be affirmed. First, no evidence was offered to establish that the Plan is, in fact, a “qualifying” trust fund. *See* 20 C.F.R. §702.162(b). Moreover, while the Plan may have acquired an inchoate entitlement to a lien under Section 17 when it paid claimant disability benefits, the administrative law judge’s finding that the lien was perfected upon the Plan’s payments is contrary to the plain language of the Act and regulation. Section 17 requires the Secretary’s authorization of a statutory lien, and Section 702.162 requires the Plan to submit an application for a statutory lien to the district director, specifying the requirements for the application and the steps to be followed thereafter. The administrative law judge’s finding that the “informal” reimbursement arrangement in this case “does not offend the Act,” Decision and Order at 3, effectively eviscerates Sections 17 and 702.162, which is contrary to a principle of statutory construction that disfavors interpretations that give no significance to portions of the text. *See, e.g., Duncan v. Walker*, 533 U.S. 167 (2001); *United States v. Menasche*, 348 U.S. 528 (1955). Thus, as the Plan did not comply with the statutory and regulatory procedures for obtaining a lien, the administrative law judge erred in finding that the Plan possessed an enforceable lien. We therefore reverse this finding as it is not in accordance with law.

We also agree with claimant and the Director that employer is not entitled to credit its payment to the Plan against its compensation liability to claimant. Employer voluntarily accepted liability for claimant’s disabling work injury. Decision and Order at 2. Section 14(a) of the Act provides that:

Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

33 U.S.C. §914(a). Therefore, as the Plan did not perfect its lien, employer was required under Section 14(a) to pay claimant directly the compensation benefits he was owed for his disability. In the absence of an enforceable lien awarded pursuant to Section 17, employer's payment to the Plan is without effect under the Act. Section 16 of the Act provides:

No assignment, release, or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter, shall be valid, and such compensation and benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.

33 U.S.C. §916. Thus, absent compliance with Section 17 or the applicability of any of the Act's other credit provisions,<sup>3</sup> Section 16 precludes employer's satisfying the Plan's claim for reimbursement out of the disability benefits due claimant pursuant to Section 14(a). In this regard, we note that Section 17 provides a qualifying trust fund with a lien when it "has paid disability benefits to an employee which the employee is legally obligated to repay by reason of his entitlement to compensation. . . ." Section 17 imposes on claimant, not employer, the obligation to repay the Plan for its disability payments out of compensation due under the Act. *See also* 20 C.F.R. §702.162(j).<sup>4</sup> Therefore, we hold that the administrative law judge erroneously found that employer is entitled to a credit against its liability to claimant for its payment to the Plan of \$5,376.43, and we vacate this finding.

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<sup>3</sup> None of the Act's credit provisions is applicable in this case. 33 U.S.C. §§903(e), 908(j), 914(j), 922, 933(f).

<sup>4</sup> Section 702.162(j) states:

In approving a lien on compensation, the district director or administrative law judge shall not order an initial payment to the trust fund in excess of the amount of the past due compensation. The remaining amount to which the trust fund is entitled shall thereafter be deducted from the affected employee's subsequent compensation payments and paid to the trust fund, but any such payment to the trust fund shall not exceed 10 percent of the claimant-employee's bi-weekly compensation payments.

We agree with the Director that this case must be remanded to the district director for initial action on this claim for benefits.<sup>5</sup> The district director should accept a lien application from the Plan, 20 C.F.R. §702.162(b), and, if the Plan is a qualifying trust fund, determine the amount of and authorize a lien. The district director should then issue a compensation order that reflects the existence and amount of the lien, the parties' prior agreement as to the amount of compensation for which employer is liable to claimant under the Act, and the manner in which the lien is to be repaid. 20 C.F.R. §702.162(d), (j). Should any party dispute the Plan's right to a lien, the amount of the lien, or the compensation claim, the case should be referred for a hearing to the Office of Administrative Law Judges. 20 C.F.R. §702.162(e), (g), (h).

Accordingly, the administrative law judge's Decision and Order granting employer a credit against its compensation liability under the Act to claimant for \$5,376.43 is vacated. The case is remanded to the district director for action consistent with this decision.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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<sup>5</sup> We reject claimant's contention that this course of action is inappropriate. We note that neither the Act nor the regulation contains any time limit on the Plan's filing a lien application. 33 U.S.C. §917; 20 C.F.R. §702.162. The Director has provided a reasonable approach to the resolution of this matter of first impression. The Director's "articulations of administrative policy are accepted as controlling, unless they are unreasonable readings of the statutory terms or contrary to clearly expressed legislative intent on the point in issue." *Ceres Marine Terminal v. Hinton*, 243 F.3d 222, 224, 35 BRBS 7, 9(CRT) (5<sup>th</sup> Cir. 2001).